

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

PAUL BERRY

Plaintiff,

vs.

JERRY COX d/b/a COX BAIL BONDS

Defendant.

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Case No.: 4:08CV00776 HEA

**DEFENDANT'S MOTION TO STRIKE PLEADINGS**

COMES NOW, Defendant, by and through counsel, and for his Motion to Strike Pleadings, states as follows:

1. On September 28, 2011, this Court issued an "Order Relating to Trial" (Document 66).

2. The Order set this case for trial on Monday, February 27, 2012. In the Order, both parties were to submit not less than ten (10) days before the trial the following:

Stipulation; List of Witnesses; Exhibits; Depositions, Interrogatory Answers, and Request for Admissions; Instructions; Trial Brief.

3. The same Order required all Motions in Limine to be filed at least five (5) days prior to trial.

4. As of Friday, February 24, 2012, Plaintiff has not complied in any manner with the Order dated September 28, 2011.

5. The Order was issued pursuant to Federal Rule of Civil Procedure ("FRCP") 16. This Rule provides that sanctions may be entered by the court as described in FRCP 37(b)(2)(B)(C)(D).

6. FRCP 37(b)(2)(C) allows the Court to strike the pleadings of a disobedient party. Plaintiff is clearly disobedient, as no part of the Court's Order of September 28, 2011 has been followed. Defendant, in turn, is clearly prejudiced in having to appear for a trial with no idea what Plaintiff intends to present as evidence, or how it is expected to be presented.

7. Defendant does therefore ask this Court to strike Plaintiff's pleadings and dismiss this action with prejudice.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests this Court to strike Plaintiff's pleadings and dismiss this action with prejudice.

Respectfully Submitted,

BASGBY & LEE, L.L.C.

/s/ Larry A. Bagsby  
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#### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing was electronically filed this 24<sup>th</sup> day of February, 2012, and mailed to:

Paul Berry  
2259 Campus Drive  
St. Charles, MO 63301

/s/ Larry A. Bagsby